

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ANTHONY L HUGHES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case number: 08 C 1360
	)	
THE SUN TIMES COMPANY, a Delaware	)	Judge Conlon
Corporation,	)	
	)	Magistrate Judge Keys
Defendant.	)	

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS**

NOW COMES the Plaintiff, ANTHONY L. HUGHES, by and through his attorney, Philip W. Collins III, and responding in opposition to Defendant's Motion to Dismiss, states as follows:

1. On November 28, 2007, the Equal Employment Opportunity Commission ("EEOC") mailed Hughes a dismissal and notice of right to sue (Compl. 11).

**Response:** Plaintiff admits paragraph 1.

2. On March 5, 2008, 98 days after EEOC mailed the notice of right to sue, Hughes filed a complaint against the Sun Times alleging violations of the Americans with Disabilities Act ("ADA") (Compl. 2)

**Response:** Plaintiff admits paragraph 2.

3. Hughes complaint is time-barred and must be dismissed because it was filed more than ninety days after receipt of his notice of right to sue. 42 U.S.C. § 2000e-5(f)(1); *see St. Louis v. Alverno College*, 744 F.2d 1314, 1316 (7<sup>th</sup> Cir. 1984).

**Response:** Plaintiff denies paragraph 3. Attorney for Plaintiff did not actually receive the notice of right to sue until Friday, December 7<sup>th</sup>, 2007 (*see attached Affidavit of Attorney for Plaintiff*). Therefore, the complaint was filed timely.

### **CONCLUSION**

Based upon the foregoing and the attached affidavit of counsel, Plaintiff prays this Court deny Defendant's Motion to Dismiss and continue this matter for further proceedings.

Respectfully submitted,

s/ Philip W. Collins III  
Attorney for Plaintiff

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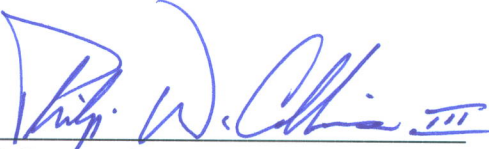
**AFFIDAVIT OF PHILIP W. COLLINS III**

Under penalties provided by law pursuant to §1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

1. I, Philip W. Collins III, attorney for the Plaintiff, Anthony L. Hughes, in the matter of Hughes v. The Sun Times, 08 C 1360, received the notice of right to sue from the EEOC on December 7<sup>th</sup>, 2007;

2. That an employee of G. F. Mann Insurance Company, also located at 940 East Diehl Road, Suite 110, in Naperville, Illinois, the same address as counsel for Plaintiff, signed a return receipt for the notice of right to sue in the above referenced matter;

3. That said notice was mistakenly delivered to another employee of G. F. Mann Insurance Company in error by their own employee, not actually being delivered to counsel for Plaintiff until Friday, December 7<sup>th</sup>, 2007.

  
Philip W. Collins III

**CERTIFICATE OF SERVICE**

Philip W. Collins III, an attorney, certifies that he caused a true and correct copy of Plaintiff's Response to Defendant's Motion to Dismiss and attached affidavit to be filed electronically in the United States District Court for the Northern District of Illinois on this 23<sup>rd</sup> day of April, 2008.

s/ Philip W. Collins III